

October 27, 2015

Secretary John Laird
California Natural Resources Agency
1416 Ninth Street Suite 1311
Sacramento CA

Subject: Regulatory Permitting for Mining Projects

Dear Secretary Laird,

The purpose of this letter is to express our concerns regarding recent regulatory permitting actions for sand mines in San Luis Obispo County. At our Board's August 18, 2015 meeting a local sand mine operator informed our Board during general public comment that he was closing two of his recently permitted river sand mines because of the regulatory burden imposed by the State, specifically, the Department of Fish and Wildlife.

We note that both mines were processed through the local land use and reclamation plan processes established by our land use ordinances and the Surface Mining and Reclamation Act (SMARA). Processing of both projects included extensive consultation with both the Office of Mine Regulation and the California Department of Fish and Wildlife, as established by the SMARA and the California Environmental Quality Act (CEQA). Subsequent to the County's approval of these projects the applicant applied for, and after an exhaustive process with the Department of Fish and Wildlife, received Streambed Alteration Agreements. We note that one of the projects successfully defended a legal challenge and the other was processed through the arbitration process established by Fish and Game Code section 1603. However, from our perspective it appears the Streambed Alteration Agreements have regulated the projects to a point of infeasibility.

The regulatory process for these two projects illustrates three important concerns from our perspective as the local Lead Agency, as defined in both SMARA and CEQA:

1. Although County staff worked extensively with the Department of Fish and Wildlife to address all of their concerns through the CEQA interagency consultation process, it appears the Department overrode the detailed analyses performed by the County and our consultants and approached the Streambed Alteration Agreements as if their initial conclusions had not been evaluated or addressed. The mine operator is now burdened with conditions of approval and infeasible versions of mitigation measures already required of the projects by the County. The Department of Fish and Wildlife disregarded the conclusions of a bona-fide CEQA process, the open public hearing process, and the perspectives of the community where the projects are located. These actions are contrary to the established CEQA standard of one Lead Agency and one all-encompassing fully transparent environmental regulatory process. If, after a properly conducted CEQA process, the State regulatory agency is able to work behind closed doors to essentially deny a project, then we conclude that fundamental requirements of CEQA are not being followed.

We have the same concern regarding our role as Lead Agency under SMARA. In these cases the Office of Mine Regulation (OMR) found no issues with the local process or its results, thereby affirming the local agency. Nevertheless, as noted above, the projects cannot move forward as approved by the County and affirmed by OMR.

2. The two sand mines in question epitomize small business. The owner, a second generation miner, attempted to extend the permits for an existing mine that has operated for decades and open a new mine on an ephemeral tributary to the Salinas River. As noted above, subsequent to the local Lead Agency's decisions, the Department of Fish and Wildlife added numerous additional detailed conditions of approval to the Streambed Alteration Agreements, apparently drawn from other mining projects located around the State. In essence, two small locally owned projects were subjected to the full weight of the regulatory process without regard to history, size, location, or actual impacts. Again, the local CEQA process, which is designed to, among other goals, ferret out the specific direct and cumulative effects of a project, was set aside in favor of a set of conditions that effectively deny the project.
3. Finally, we note with a high level of concern that the regulatory approach applied to these two projects was not fully vetted by the State either through CEQA or for the community. The secondary economic and environmental effects of these regulatory actions are substantial. Given that sand mining is market driven, these raw materials will now be produced by other sites located out of the area. Nowhere did the State agency consider the direct air quality impacts of additional miles driven by heavy trucks, the regional effects on efforts to reduce greenhouse gases, and the impacts on already overburdened highways. At the same time, local residents are now expressing concerns about the loss of flood control benefits afforded by these projects. Although the State agency had full access to studies and reports addressing sediment budget, sand transport, and resulting effects, the flood control benefits inherent in the projects were clearly not considered by the State. We are now facing a potentially severe El Niño and downstream interests no longer have the benefits provided by the now closed existing mine, or the potential benefits that could have accrued from the new mine.

In conclusion, these projects illustrate our concerns in the State's application of environmental regulations: the undoing of the local Lead Agency roles as established by CEQA and SMARA; application of conditions that result in the loss of small business and increased environmental impacts on a regional basis; and a single focus approach that places ever increasing environmental, social, economic and public safety burdens on local communities. We believe that a first step to avoiding these negative results can be achieved by complying with the letter and intent of CEQA and SMARA with respect to the role of the local Lead Agency, and request that you direct all of the Departments, Boards, Commissions, Conservancies and Councils in the California Resources Agency make every effort to do so.

Thank you for your time and consideration. If you have any questions or wish to follow up with us on any of the issues raised above, please feel free to contact me or my legislative assistant, Jennifer Caffee at (805)781-5450 or jcaffee@co.slo.ca.us.

Sincerely,

DEBBIE ARNOLD
Chairperson, San Luis Obispo County Board of Supervisors

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